



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 7, 2009

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2009-14139

Dear Mr. Alicie:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 357576.

The Baytown Police Department (the "department") received a request for police report number 2009-28808. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information relates to an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses . . . identifying information of another person without the other person's consent." Act of June 15, 2007, 80th Leg., R.S., ch. 1173, § 2, 2007 Tex. Gen. Laws 4019, amended by Act of May 12, 2009, 81st Leg., R.S., ch. 87, § 19.002, 2009 Tex. Sess. Law Serv. 208, 298 (Vernon) (to be codified at Penal Code § 32.51(b)(1)). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

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- (1) the name of the victim;
 - (2) the name of the suspect, if known;

(3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and

(4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For the purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted information involves the alleged theft and fraudulent use of a debit card, and the requestor is listed as the crime victim. Furthermore, the information relates to an offense that occurred after September 1, 2005. Thus, the submitted information is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent that the information is confidential. You seek to withhold portions of the submitted information under sections 552.108 and 552.147 of the Government Code. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the department may not withhold any of the submitted information under section 552.108. However, because section 552.147 is a confidentiality provision, we will consider your argument under that exception.

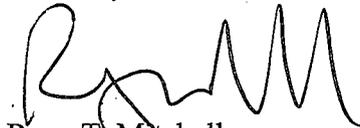
Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Therefore, the department may withhold the partial social security numbers you have marked under section 552.147(b). As you raise no further exceptions against disclosure, the department must release the remainder of the submitted information pursuant to article 2.29 of the Code of Criminal Procedure.¹

¹We note that the information to be released contains information that would be confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Should the department receive another request for this information, the department should again seek a decision from this office.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 357576

Enc. Submitted documents

cc: Requestor
(w/o enclosures)